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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~427~~ 227

ANNI H. J. E. OEHMICHEN, *Petitioner*

v.

HERBERT BROWNELL, JR., ATTORNEY GENERAL, AND AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioner, Anni H. J. E. Oehmichen, appellee below, prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in the above-entitled case.

OPINIONS BELOW

The findings of fact, conclusions of law and judgment of the District Court are unreported, but are

set forth at pages 21-28 of the transcript of the record herein (J.A. 21-28). The opinion of the Court of Appeals for the District of Columbia Circuit is as yet unreported but is set forth, together with its judgment, at pages 184-190 of the transcript of the record herein and in Appendix A hereto (pp. 1-8, *infra*).

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit, reversing the District Court, was dated and entered February 28, 1957. The plaintiff-appellee's timely petition for rehearing or rehearing en banc, filed on March 15, 1957, was denied by orders dated and entered March 29, 1957. The jurisdiction of this Court is invoked under Tit. 28, U.S.C., Secs. 1254(1) and 2101( ).

QUESTIONS PRESENTED

(1) Whether the petitioner and her husband, both long-time residents in the United States, were ever "enemies" under the Trading with the Enemy Act—i.e., whether they became "resident within" Germany, within the meaning of that term as used in the Trading with the Enemy Act, when shortly before the end of hostilities they went to Germany as repatriates, for the sole purpose of escaping from indefinite continued confinement in internment camps in this country, and with the fixed intention to return to the United States as soon as possible after the end of hostilities.

(2) Whether the Attorney General may retain property seized from the petitioner under the Trading with the Enemy Act at a time when she had left Germany, had returned to the United States as a permanent resident, and was not on any other basis

an "enemy" within the meaning of that term as used in the Trading with the Enemy Act.

STATUTES INVOLVED

The statutory provisions involved are Sections 2(a) and 9(a) of the Trading with the Enemy Act, as amended, 40 Stat. 411, et seq., as amended, Tit. 50 U.S.C. App. §§ 2(a) and 9(a), set forth in Appendix B hereto (pp. 9a-10a, *infra*).

STATEMENT

The petitioner and her husband owned some $15,000 worth of property in the United States, different portions of which were vested by the Attorney General, pursuant to the provisions of the Trading with the Enemy Act, in 1947, 1950 and 1951 (J.A. pp. 7, 9, 12). Petitioner brought this action for the return of such property in the United States District Court for the District of Columbia in 1954, pursuant to the provisions of Section 9(a) of that Act, by the terms of which any person "not an enemy" may bring such an action and recover his property. "Enemy" is defined in Section 2(a) of the Act as including, *inter alia*, persons who are "resident within" enemy territory (App. B, pp. 9a-10a, *infra*).

At the time of the first vesting, petitioner and her husband were physically present in Germany, under circumstances to be detailed below. One of the major issues of this case is whether, under those circumstances, petitioner and her husband were "resident within" Germany and therefore "enemies", disentitled as such to sue for and recover the property then vested. This is the so-called "residence" issue. At the time

of the second and third vestings, petitioner's husband had died and petitioner, his sole legatee, had returned to the United States as a permanent resident and picked up the threads of her former existence here. The other major issue in this case is whether, regardless of the "residence" issue, the petitioner is not in any event a non-enemy as to the property vested after her return to the United States and therefore entitled to recover it. This is the so-called "late vesting" issue. In the instant case the majority of the Court of Appeals became so engrossed in the residence issue that they either overlooked or ignored the late vesting issue. Chief Judge Edgerton did not reach it in his dissent (App. A, pp. 1a-8a, *infra*).

The "late vesting" issue presents a question of law which requires little factual exposition beyond the foregoing. The residence issue, however, turns on questions of intent, and therefore requires a fairly complete summarization of the evidence underlying the unchallenged findings of fact made by the trial court (J.A. 21-25).

At the outbreak of World War II petitioner and her husband were modest persons of modest means who had long been residents of the United States. Though they were born in Germany he had not lived there since 1923 and she since 1928, at which time they were young people in their 20's. After 1928 they lived for a number of years in the Far East, during which time they became engaged to be married. They were married in London in 1934, and from then on lived in the United States as permanent residents. Petitioner's husband established himself in the importing business, in which petitioner herself also took an active part. At first they had their business in

Chicago, but after 1935 it was in New York. In 1939 petitioner's husband had the misfortune to invest in and operate the Casino of Nations, an unprofitable restaurant at the Worlds Fair which featured German beers and wines for which he had the American agency. In 1941 he took out his first papers for United States citizenship. Petitioner did not do so, in order to preserve certain inheritance rights in Germany.

One night early in March, 1942, FBI agents swooped down upon petitioner and her husband, arrested them as dangerous enemy aliens, and carted them off to jail late that night. Petitioner was released the next day, but her husband was not; he remained imprisoned for the next two and one-half years, first at Ellis Island, and later at Crystal City, Texas, where his wife joined him.

Petitioner and her husband were never informed as to the reasons for arresting them as "dangerous enemy aliens", and, as the record shows, do not know to this day.[1] Newspaper accounts appearing just after their arrest set forth numerous "facts" purportedly underlying the arrests, which at the trial below were shown to be untrue and entirely without any semblance of foundation—e.g., that they owned two airplanes, that they were acquainted and friendly with von Ribbentrop, the German Foreign Minister, and that they imported products from a German company owned by

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[1] Ever since their arrest, efforts have been made to ascertain the reason for the Attorney General's designating them "dangerous enemy aliens", and arresting them as such, but all efforts have been unsuccessful. Prior to the trial the Attorney General was served with a notice to produce the pertinent records of his department which he refused to do. A motion to require production twice made at the trial was denied by the District Judge (J.A. 29-30).

a family into which von Ribbentrop had married. In any event, petitioner's husband felt that he had been unjustly treated and reacted very badly to his arrest and confinement. He was profoundly upset by the inaccuracies of the newspaper accounts, by the fact that he was not trusted to be at liberty—"that something was against him, which he didn't know" (J.A. 42)—and by the fact of being locked up. He became fearful; he lost a great deal of weight; he cried frequently (which he had never done before); he begged petitioner to get him out. In the words of petitioner, "He just did not stand the internment at all. He didn't bear up." (J.A. 42).

As a result of the foregoing, petitioner's husband signed a form in May, 1942, requesting repatriation to Germany for himself and petitioner, to which he added the significant words, "In the event of my internment". At that time petitioner's husband had had a somewhat random "hearing" on whether he should be released or should continue to be interned. Some time had elapsed, but the results of the "hearing" had not been announced, and he "was fascinated by the idea of leaving the camp" (J.A. 43). Prior to that time neither he nor petitioner had ever considered the idea of leaving the United States.

Thereafter it became clear that petitioner's husband would continue to be interned, and petitioner herself became exceedingly ill. She too lost a great deal of weight and suffered a variety of physical ailments and infections, as well as mental disturbances. Her husband feared her "utter collapse", and one of her doctors concluded that she was "suffering from a persecution neurosis which, if left neglected would result in a severe nervous breakdown with resultant

confinement to a mental institution". Consequently a number of additional requests for repatriation were made by and on behalf of petitioner and her husband during the summer of 1942. None was granted, however, and in December, 1942, petitioner's husband was transferred to the internment camp at Crystal City, Texas, where petitioner was permitted to join him.

The camp at Crystal City was surrounded by a "very high" barbed wire fence which was kept lighted at night and was watched over by armed guards from high towers. Petitioner and her husband had no doubt that they were in prison. They lived in a shelter, without sewer or water and had continual difficulties with the pro-Nazi majority in the camp. Their access to recreational facilities which the camp offered was restricted because of their difficulties with the pro-Nazis. Petitioner's husband was forced out of teaching in the camp school—the only work in the camp for which he was suited—because, among other things, he taught the children about Einstein. He was physically attacked, stoned, and threatened with hanging by the pro-Nazi element on various different occasions, and was fearful for his safety. Thus after a short time in the Crystal City camp, he again requested repatriation—limited, however, to repatriation "during the war, otherwise not" (J.A. 144).

As time went on he became further depressed, to the point of being sometimes irrational in his actions, and at one point in June, 1944, he signed a form stating that he would not accept parole if it was offered. Petitioner testified that it was her husband's view at the time that accepting parole would be tantamount to confessing guilt of some offense, and would result in his being treated by the parole officers as a common

criminal (J.A. 59). Thereafter, following a brief leave from the camp, which petitioner was allowed to take without her husband, she was able to persuade him that his judgment had been affected by "barbed wire sickness" and that he had misunderstood the consequences of parole. She then specifically requested a review of his case, and applied for his release on parole. The reply was that, "No change will be made in your husband's internment status at this time."

Then in the first days of 1945, at a time when the Allied invasion of Europe and the liberation of France had already taken place, and the eventual outcome of the war was no longer in doubt, petitioner and her husband finally had an opportunity, which they took, to escape from confinement by being repatriated to Germany. They left all their possessions, both personal and business, in storage in New York, refusing numerous offers to buy such property as their automobile, appliances and furnishings at premium prices, because they expected soon to return to the United States, when they would use such articles.

Petitioner and her husband were shipped to Bregenz, Austria, where they remained, having no place else to go. They did not seek employment or engage in business. Petitioner's husband made two trips into Germany to search for relatives, in the course of which he sold two pounds of coffee which they had brought with them for 5,000 marks, which enabled them to defray their living expenses for a long time without working. In April, 1945, petitioner's husband was arrested as a political prisoner by the Gestapo, because other Crystal City repatriates had reported that he was anti-Nazi. He was released a few days later, how-

ever, when the First French Army approached Bregenz and his German jailers fled.

Immediately after the hostilities in Europe ended, but while the war with Japan was still going on, petitioner and her husband commenced efforts to obtain re-entry permits for return to the United States. In due course, they learned that such permits could not be issued and that they would have to obtain visas to return. In the meantime, petitioner and her husband made their way to Wiesbaden, in the American Zone of Occupation, where petitioner's husband was engaged by the American Army of Occupation and the local Ministry of Economics to organize an export show, for which work he was highly commended by his American superiors. Neither he nor petitioner engaged in any employment or business other than this while in Europe, although petitioner's husband was offered opportunities to engage in business in Germany, all of which he declined.

Petitioner's husband died in Wiesbaden on May 19, 1948, as a result of a disease from which he was found to be suffering while imprisoned at Crystal City. Shortly thereafter, petitioner went to Switzerland and there obtained an immigration visa which, it had turned out, could not be issued by the American Consulates in Germany. In February, 1949, she re-entered the United States as a permanent resident, and since then she has re-established the import business which she and her husband conducted before the war, has taken her belongings out of storage, has become an American citizen, and has brought to the United States such members of her immediate family as remained in Germany after the war.

On the basis of the foregoing evidence, the trial court made detailed findings of fact, the evidentiary support for which was not questioned on appeal. Among these findings were the following:

"8. Prior to the time of their arrest, neither plaintiff nor her deceased husband had any intention to abandon their residence in the United States.

"10. As a result of the internment and its effect on him plaintiff's husband requested repatriation and plaintiff made requests for repatriation to various departments and persons in the United States Government. Such requests were for repatriation and were clearly limited to repatriation during the time that internment was expected to last, i.e., the duration of the war.

"11. Plaintiff and her husband at all times intended to return to the United States after the end of hostilities.

"12. All requests for repatriation were made for the sole purpose of freeing plaintiff's husband from internment and were made solely because of internment and its attendant conditions.

"14. Plaintiff's husband was once physically attacked and at another time an attack on him was prevented by others present. A stone was thrown at him on one occasion and at another time pro-Nazi groups shouted that he should be hanged.

"16. The requests for repatriation to Germany by plaintiff and her husband were made solely to escape internment and the emotional problems created thereby.

"17. Plaintiff's husband was the highly-nervous type; he was not pro-Nazi, and the attitude of this group of internees toward him and plaintiff rendered his life as an internee particularly uncomfortable. Especially was this the case when

he felt that his confinement was not justified if all the facts as to his sympathies were duly weighed.

"23. Plaintiff and her husband, as soon as hostilities in Europe had ended, made every effort they could to return to the United States and solicited the intervention of friends and relatives in the United States before the United States immigration authorities to aid their return.

"24. At no time while they were in Austria or Germany did plaintiff or her husband seek employment or engage in business except for plaintiff's husband's employment with the United States Army of Occupation.

"25. Plaintiff's husband was offered opportunities to engage in business in Germany which he did not accept.

"28. After plaintiff's furnishings were stored, both she and her husband, while in the United States and in Europe, refused offers to buy their automobile and certain household appliances at premium prices because they planned to use these possessions again upon their return to the United States.

"31. Neither plaintiff nor her husband ever abandoned their residence in the United States." (J.A. 21-25).

On the basis of these findings, the trial court concluded that petitioner and her husband never became "resident within" Germany, their requests for repatriation being "not the result of their free and intelligent choice". Hence they were not "enemies" under the provisions of the Trading with the Enemy Act, and petitioner was entitled to return of her own property and that inherited from her husband. The trial court also concluded that in any event, petitioner was not an

enemy at the time of the second and third vestings, in 1950 and 1951, because, having by then returned to the United States, she was not then resident within enemy territory.

The United States Court of Appeals for the District of Columbia Circuit reversed, Chief Judge Edgerton dissenting. The majority held, without controverting the trial court's findings of fact and in direct opposition to its conclusions of law, that petitioner and her husband became "resident within" Germany when they were repatriated because they were "willing residents" of Germany, and were "in Germany by their own *free* choice" (emphasis supplied). (App. A, pp. 4a-5a, *infra*). It did not consider petitioner's contention that in any event she was entitled to return of so much of the property as was seized after her return to the United States because at least by then she was no longer "enemy".

The dissent did not reach the "late vesting" issue, but was based on the proposition that "if aliens who have long been resident in the United States choose repatriation to an enemy country in preference to imprisonment in the United States during a war, and always intend to return to the United States as soon as the war is over," they do not thereby become " 'resident' in the enemy country during their sojourn there".

Petitioner filed a timely petition for rehearing, asking that the "late vesting" issue be considered and passed upon, which petition was denied, Chief Judge Edgerton again dissenting.

REASONS FOR GRANTING THE WRIT

A. THE RESIDENCE ISSUE

(1) In holding, notwithstanding the facts as found by the trial court, that petitioner and her husband were "willing residents" of Germany, there "by their own free choice", the Court of Appeals decided an important federal question which has not been, but should be, settled by this Court.

One of the reasons advanced by petitioner in the court below in support of her contention that she and her husband never became "resident within" Germany was that their "choice" of repatriation as the only alternative to indefinitely continued confinement was not a sufficiently free choice to make them residents, within the meaning of the Trading with the Enemy Act. The majority of the court below held, however, that their presence in Germany was voluntary, for purposes of that Act, and without looking further, reversed the trial court's judgment for petitioner.[2]

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[2] The court below summarily dismissed the decision of the United States District Court for the District of Hawaii in the case of *Akata* v. *Brownell*, 125 F. Supp. 6 (D. Haw. 1954), saying simply, "We do not have in this case anything resembling the facts depicted in * * * *Akata* v. *Brownell*" (among others). Any fair reading of the *Akata* case, however, must necessarily leave one with the clear conviction that it would be difficult to have a case more closely in point, or in which the facts more closely "resembled" the facts in the case at bar, except for differences favorable to the petitioner herein. Akata, a long-time resident of Hawaii, was, like petitioner's husband, arrested and interned in 1942, without being informed of the substance or nature of any charges preferred against him. He was kept in a series of detention camps, ending up, with his wife and all of his six children, in the very camp at Crystal City, Texas, where petitioner and her husband were interned. While so detained, he executed a series of requests for repatriation—not, as in the present case, limited to repatriation "in the event of internment", or "if possible, during the war, otherwise not", but conditioned instead on his whole family (from which he was separated until 1945) being

In so doing, it decided an important federal question which has not been, but should be, decided by this Court—namely, where is the line to be drawn between the "voluntary" and the "involuntary" in this field?

The law is clear and undisputed that involuntary presence in enemy territory is not such presence as amounts to "residence" for purposes of the Trading with the Enemy Act. *Guessefeldt* v. *McGrath*, 342 U.S. 308 (1952); *McGrath* v. *Zander*, 85 U.S. App. D.C. 334, 177 F. 2d 649 (1949); *Stadtmuller* v. *Miller*, 11 F. 2d 732, 45 ALR 895 (2d Cir. 1926); *Josephberg* v. *Markham*, 152 F. 2d 644 (2d Cir. 1945); *Akata* v. *Brownell*, *supra*. But while this Court held in the *Guessefeldt* case, *supra*, that involuntary presence precluded a finding of residence, it has not under-

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allowed to accompany him. The whole family was repatriated to Japan in December 1945, after it had been reunited and after the end of hostilities. Akata settled down to farming in Japan and bought some land. In 1947 his property in Honolulu was vested and in that year he made inquiries about returning to Hawaii, which he finally did as an immigrant in 1952. He testified that when he went to Japan in 1945 he did not intend to stay there permanently and that Honolulu was his home. On these facts the District Court held that his involuntary uprooting from his home "infected whatever actions he took thereafter", and that he did not become "resident within" Japan because

> "at no time did the plaintiff freely and voluntarily abandon his permanent residence in Honolulu with the intention of taking up a new and permanent residence of his own choice in Japan." 125 F. Supp. at 10.

The court below was not, of course, bound by the decision of the District Court in Hawaii, and there could be no complaint had it simply stated its unwillingness to follow such decision. But its offhand dismissal, as not in point, of a case which is so evidently directly in point creates an unfortunate impression of such preoccupation in the reviewing court with the one question which interested it that it quite failed to consider the bulk of petitioner's case.

taken to explore how much less than actual "physical constraint" will suffice to render action taken involuntary. This is a question which frequently comes up, not only in connection with the loss of property under the Trading with the Enemy Act, but in connection with the loss of citizenship under the nationality laws. *Akata* v. *Brownell, supra; Josephberg* v. *Markham, supra; Stadtmuller* v. *Miller, supra; Acheson* v. *Murakami,* 176 F. 2d 953 (7th Cir. 1949); *Podea* v. *Acheson,* 179 F. 2d 306 (2d Cir. 1950); *Dos Reis* v. *Nicolls,* 161 F. 2d 860 (1st Cir. 1947); *Parrachini* v. *McGrath,* 103 F. Supp. 184 (S.D. N.Y. 1952); *Shibata* v. *Acheson,* 86 F. Supp. 1 (S.D. Cal. 1949); *Ishikawa* v. *Acheson,* 85 F. Supp. 1 (D.C. Haw. 1949); *Schioler* v. *United States,* 75 F. Supp. 353 (N.D. Ill. 1948); *In re Gogal,* 75 F. Supp. 268 (W.D. Pa. 1947); *Stipa* v. *Dulles,* 233 F. 2d 551 (3rd Cir. 1956). Petitioner submits that whatever the tests of duress in other fields of law, loss of citizenship under the nationality laws is hardly less serious than loss of property under the Trading with the Enemy Act, and accordingly the same criteria should be employed in either case in determining whether action involving such consequences was voluntarily taken.

The holding of the majority below that petitioner and her husband, by choosing repatriation to free themselves from confinement, exercised a "free choice" and were "willingly" in Germany is in direct conflict with the law established by the Circuit and District Courts in the so-called nationality cases. In those cases the courts have universally held that otherwise expatriating action, taken in order to preserve or gain freedom, where the alternative is confinement, does not carry with it the normal consequence of for-

feiture of citizenship. *Podea* v. *Acheson, supra; Dos Reis* v. *Nicolls, supra; Parrachini* v. *McGrath, supra; Shibata* v. *Acheson, supra; Ishikawa* v. *Acheson, supra; Schioler* v. *United States, supra;* and *In re Gogal, supra.* All of those cases involved the performance of an act, in order to avoid actual or threatened imprisonment, which normally would cost the actor his American citizenship. But in each case the court held that under such circumstances the act was involuntarily performed and therefore did not serve to bring about expatriation.[3] In the instant case the situation is the same: an act is compelled by the desire to escape from imprisonment, which act is the first step in placing petitioner within the language of a statute which would confiscate her property. In either case the considerations should be the same, i.e., whether the compulsion is sufficient to make the act involuntary.

If the principle of the nationality cases is correct and action taken to avoid imprisonment is not to be permitted to effect a forfeiture of citizenship, this Court should determine whether that principle is not equally applicable in the field of alien property, so that action taken to free oneself from imprisonment will not lead to a forfeiture of property either. And whether that principle is correct or not, the conflict between the nationality cases and the decision below is such that this Court should undertake to offer some guidance in determining whether action taken to regain or keep personal liberty is to be permitted to effect, or lead to, a forfeiture of property.

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[3] In *Stipa* v. *Dulles, supra,* the Third Circuit went beyond this to hold that economic necessity which induced acceptance of employment with a foreign government was sufficient to make the employment involuntary and therefore not expatriating conduct.

(2) In holding inapplicable the decision of this Court in Guessefeldt v. McGrath, 342 U.S. 308 (1952), and looking only to whether or not the repatriation of petitioner and her husband was "voluntary", the Court of Appeals decided a federal question in a way which is in conflict with applicable decisions of this Court.

The meaning of the words "resident within" in the definition of "enemy" in Sec. 2(a) of the Trading with the Enemy Act is central to our laws dealing with the control of enemy property and is brought in issue by substantially every judicial claim for the return of vested property. This Court has attempted, in its one opinion dealing with the issue, to give some comprehensive guidance as to the meaning of these words. *Guessefeldt* v. *McGrath*, 342 U.S. 308 (1952). The essence of its holding was that residence within enemy territory, for purposes of the Trading with the Enemy Act, requires not only physical presence, but an element of intent to be and to remain there which approaches actual domiciliary intent. 342 U.S. at 311-312.

The majority of the Court of Appeals in the present case did not purport to apply this test, but termed the *Guessefeldt* case inapplicable, and looked simply to whether or not the "choice" made by petitioner and her husband to be repatriated was voluntary. It was evidently confused by petitioner's contention that involuntary presence *precluded* a finding of residence and reasoned therefrom that the converse must be true—i.e., that if petitioner and her husband went to Germany voluntarily (as the Court went on to hold they did) then that voluntary presence, without more, would *require* a finding of residence. But this is by no means true, for the *Guessefeldt* opinion and the cases cited therein make it plain that one may enter (or remain in) enemy territory far more voluntarily

than did petitioner and her husband without becoming resident therein. See especially *Stadtmuller* v. *Miller*, 11 F. 2d 732, 45 ALR 895 (2d Cir. 1926), in which a German citizen domiciled in the United States, who was in Europe for his health during World War I, entered Germany after the United States was at war simply because he desired to take a "short rest" and settle the estate of his parents. Though his entry into Germany could hardly have been more voluntary, the Second Circuit held, after a comprehensive and careful review of the relevant cases and literature, that he did not become "resident within" Germany, since he had not intended to remain in Germany, but "found himself prohibited from leaving" by government regulations—a circumstance which can hardly have come as any surprise to him.

The *Guessefeldt* case involved a German citizen domiciled in the United States who alleged that he took his family to Germany for a vacation in April, 1938, was caught there by the outbreak of war in September, 1939, and was unable to secure passage home before March, 1940, when his re-entry permit expired. Thereafter, when this country entered the war, he was "involuntarily detained in Germany, first by the Germans and after 1945 by the Russians, until July, 1949". On these allegations this Court found it "clear" that Guessefeldt was not "resident within" Germany during the war, noting that his "stay before the war, as a matter of choice, was short" and that "the circumstances negative any desire for a permanent or long-term connection with Germany". 342 U.S. at 312.

In its discussion of "resident within" this Court simply observed that the term was intended to reach

beyond domiciliaries but not so far as sojourners in enemy territory, and defined it as implying "something more than mere physical presence and something less than domicile". 342 U.S. at 312. However the five lower court cases cited by this Court serve to put some flesh on the bones of this definition, for while they were cited "without specifically approving any of them", they were nevertheless relied upon by this Court for the "relevant extrinsic light" which they cast on the meaning of "resident within". They involved (1) an individual theretofore resident in the United States and later declared incompetent who, on doctor's advice, had returned to live in his home town in Italy from 1931 through World War II (*Josephberg* v. *Markham*, 152 F. 2d 644 (2d Cir. 1945)), (2) a German surgeon theretofore resident in the United States who in September, 1915, wishing to advance his career, aid the wounded, and visit his daughter, entered the service of the German Army for the duration of World War I as a Red Cross surgeon (*Vowinckel* v. *First Fed'l Trust Co.*, 10 F. 2d 19 (9th Cir. 1926)), (3) the individual discussed above who entered Germany after this country had gotten into World War I to take a rest and settle his parents' estate (*Stadtmuller* v. *Miller*, *supra*), (4) a native German and citizen of the United States, theretofore resident in the United States, who moved his wife to Germany in 1939 and who served as an agent of the secret intelligence service of the German Army during World War II (*Sarthou* v. *Clark*, 78 F. Supp. 139 (S.D. Cal. 1948)), and (5) a native American woman, in Germany for a visit, whose scheduled return home on September 9, 1939, was prevented by the outbreak of World War II, and who remained to marry a German citizen and live in Germany through-

out the war (*McGrath* v. *Zander*, 85 U.S. App. D.C. 334, 177 F. 2d 649 (1949)). In each of these five cases the Court held that, under all the circumstances, the claimant was not resident within enemy territory. And in each of them it is clear that the Court applied substantially the same conception of the meaning of "resident within" to the facts before it. This conception was distilled out of the first three cases in the fourth case mentioned as follows:

> "We think 'resident within the territory' as employed in the Act connotes something different from and more than living within specified areas. It is rather indicative of a settled and permanent place of abode, volitionally acquired and voluntarily assumed. It is a habitation having domiciliary properties [Citing the *Josephberg*, *Vowinckel* and *Stadtmuller* cases]." *Sarthou* v. *Clark, supra*, 78 F. Supp. at 142.

This distillation was quoted with approval in *McGrath* v. *Zander, supra*, the fifth case cited by this Court in *Guessefeldt*, and it has been adopted in subsequent cases as the controlling statement of the principle, *Kaku Nagano* v. *McGrath*, 187 F. 2d 759 (7th Cir. 1951) aff'd 342 U.S. 916 (1952); *Akata* v. *Brownell*, 125 F. Supp. 6 (D.C. Haw. 1954).

In the "extrinsic light" of the conception of residence underlying these decisions, it seems clear that petitioner and her husband did not, by their repatriation, become resident within Germany. They had no notion of leaving the United States until petitioner's husband was interned. They did not want to be repatriated except to escape from such internment. They wanted to come back to the United States as soon as they could without again being interned. Passing

the question whether their repatriation resulted in their having a place of abode in Germany which was "volitionally acquired and voluntarily assumed"; it is perfectly plain that in any event it was in no sense a settled and permanent place of abode, or a habitation having domiciliary properties. No doubt they understood better than Stadtmuller (*Stadtmuller* v. *Miller, supra*) that once in Germany they would be unable to leave until the end of the war—but at the time of their actual repatriation, January, 1945, the end of the war was in sight, and at the time of the first request for repatriation no one doubted that it would end in due course. In short, there were two stringent limitations on their presence in Germany which make it impossible reasonably to say that there was anything settled, permanent or domiciliary about it: (1) they did not want to be in Germany at all, except that it was necessary in order to free themselves from the internment camp; (2) they did not want to remain in Germany any longer than they had to, which, at the time of their actual repatriation, could not be long. In the words of this Court in *Guessefeldt*, "The circumstances negative any desire for a permanent or long-term connection with Germany". 342 U.S. at 312.

Thus when the facts in the instant case are matched against the opinion of this Court in the *Guessefeldt* case, it seems clear that the Court of Appeals' decision is grossly out of harmony with the concept of residence adopted by this Court. The extent of this conflict is underlined by a consideration of *McGrath* v. *Kaku Nagano*, 342 U.S. 916 (1952), which was decided by this Court on the same day as the *Guessefeldt* case and is the only other case in which the "resident within" issue has been before it. There this Court

affirmed, by an equally divided vote and hence without opinion, a Court of Appeals finding of non-residence. Notwithstanding the division of this Court, the facts in the *Nagano* case are eloquent as to how closely one may approach actual domicile in enemy territory and still leave it at least doubtful whether he is resident therein for purposes of the Trading with the Enemy Act. The circumstances were these: The claimant, a Japanese native, married a resident of the United States and established her residence in Chicago in 1915. She was physically present in the United States, except for trips to Japan, from then until 1924. *From 1924 on, the claimant was never again in the United States, but lived in Japan continuously, until five years after the end of the fighting in World War II.* During all this time she remained in Japan because she desired to be there while her children were educated and because, after the daughters reached marriageable ages in 1932 and 1937, she needed to be there if their marriages were to be arranged. Arranging the marriage of one of the daughters required until 1941, but the other never married and in 1950 the claimant gave up and returned to the United States to resume her residence here. Presumably the claimant would have been unable to return to the United States during the war years had she wanted to, but there is no trace of a suggestion that she wanted or attempted to. Nevertheless she alleged and the Seventh Circuit held that she had never intended to, and had not, relinquished her residence in the United States or become "resident within" Japan, 187 F. 2d at 762-764.

The Trading with the Enemy Act is confiscatory legislation, justified only by the necessities of war,

and the provisions with which we are here concerned are in mitigation of such confiscation, which may go far to explain why the courts have consistently been reluctant to attribute enemy status to persons, like petitioner, whose property and whose loyalty were not in fact at the disposal of the enemy during the war. In any event, the decision of the Court of Appeals in the present case is wholly out of keeping with the trend of decision in this Court and in the lower courts, and suggests the need for a further expression by this Court as to the meaning of "resident within" in the Trading with the Enemy Act, for the guidance both of the lower courts and the Office of Alien Property in connection with the many judicial and administrative claims[4] for return which remain still to be settled.

B. THE LATE VESTING ISSUE

(3) In ruling against petitioner on the late vesting issue, without discussion, the Court of Appeals decided an important question of federal law which has not been, but should be, settled by this Court.

The second and third seizures of petitioner's property by respondent were made *after* petitioner had returned to the United States as a quota immigrant, *after* she had been lawfully admitted to the United States for permanent residence and *while* she was in fact resident within the United States, as she has been continuously at all times since her return. Although it be true that at the time of such seizures petitioner

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[4] The periods of limitations fixed by Section 33 of the Trading with the Enemy Act (Tit. 50, U.S.C. App. § 33) for the filing of judicial and administrative claims for the return of vested property are such that there are now pending many administrative claims which cannot be heard judicially, so that the final decision thereon must be that of the Office of Alien Property, reached on the basis of relevant court decisions.

was a German citizen, residence, not citizenship, is the sole determinative factor under that portion of Section 2(a) of the Trading with the Enemy Act which alone is here relevant. That definition of "enemy" is simply "[a]ny individual * * * of any nationality, resident within the territory * * * of any nation with which the United States is at war * * *". This definition was derived bodily from the prize law concept long obtaining in Anglo-American jurisprudence that for the purposes of prize, the enemy or non-enemy character of the owner of captured property depends not on his citizenship, but on whether or not he resided at the time of the capture within enemy territory. See, e.g., *The Friendschaft,* 3 Wheat. (U.S.) 12 (1818); *The Venus,* 8 Cran. (U.S.) 253 (1814). And, while in the forty years since the enactment of the Trading with the Enemy Act, there has been no judicial determination whether under it the property of an individual may be seized and confiscated *after* he has ceased to reside in enemy territory, the numerous prize cases in which the question was raised unanimously answered it in the negative. *United States* v. *Guillem,* 11 How. (U.S.) 47 (1850); *The Friendschaft, supra; The Venus, supra; The Francis,* 1 Gall. 614, Fed. Cas. No. 5,034 (1813), aff'd 8 Cran. (U.S.) 363; *Duguet* v. *Rhinelander,* 2 Johns. Cas. (N.Y.) 476 (1802). The principle underlying these decisions is that the status of "enemy" derives from residence and that "[t]he character that is gained by residence ceases by residence. It is an adventitious character which no longer adheres to him, from the moment that he puts himself in motion, *bona fide,* to quit the country, *sine animo revertendi*". *The Indian Chief,* 3 C. Rob. 12, 20, 21 (Eng. 1801).

While in the opinions below this issue was not considered, the respondent contended that the principle thus enunciated and expressly adopted by this Court had been discarded in favor of a new principle, "once an enemy always an enemy.", in *Swiss Nat. Ins. Co.* v. *Miller*, 267 U.S. 42 (1924). But that case stands for no such principle. There the property of an otherwise neutral corporation was seized while it was "doing business" within enemy territory, and was thus an "enemy" under a definition in Section 2(a) of the Act with which we are not here concerned. Thereafter it ceased "doing business" within enemy territory and brought suit to recover the vested property, claiming to be non-enemy. In rejecting the claim, Mr. Chief Justice Taft said (267 U.S. at 44) that a "change like this could not take away the status of the seized property as enemy property". Thus all the case holds is that the date of vesting is the critical date for determining the enemy or non-enemy status of the owner of vested property. This is the traditional view that has long obtained in prize law. Thus, in *United States* v. *Guillem, supra*, the property of a French citizen who resided in Mexico during part of the war between that country and the United States, was seized *after* his departure from Mexico for France in the midst of the war. His property was returned, Mr. Chief Justice Taney saying for the Court (11 How. at 60):

> "The hostile character which his domicile in Mexico had impressed upon him and his property had * * * been thrown off; and as soon as he sailed from Vera Cruz he resumed the character of a French citizen, and as such was entitled to the rights and privileges of a neutral, in regard to his property, as well as his person."

Similarly, in *The Francis, supra,* Mr. Justice Story, sitting on circuit, said:

> "As to citizens domiciled in the enemy country, I hold it to be the established rule, that if they wish to avoid the hostile character, they must actually remove before the breaking out of hostilities. Otherwise their property then afloat will be liable to confiscation. If they do not so remove, the character of the country is completely impressed upon their property, wherever it is found, and remains until they have abandoned their residence, *and then, as to all future transactions, the character of their native or adopted country returns.* * * *" (Emphasis supplied.)

Again, in *The Venus, supra,* it was held that where an American citizen was resident within an enemy country at the time of the seizure of his property, it was properly treated as enemy because of the enemy character he derived from his residence. But Mr. Justice Washington, expressly adopting the principle laid down in *The Indian Chief, supra,* went on to say (8 Cran. at 280) that

> "* * * this national character which a man acquires by residence, may be thrown off at pleasure, by a return to his native country * * *. To use the language of Sir W. Scott, it is an adventitious character gained by residence, and which ceases by non-residence. * * * Having once acquired a national character by residence in a foreign country, he ought to be bound by all the consequences of it, until he has thrown it off * * * by an actual return to his native country * * *."[5]

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[5] Another alternative held to accomplish a termination of the enemy status of an American citizen derived from residence in enemy territory, is "commencing his removal, *bona fide,* and without an intention of returning", 8 Cran. at 281. On these pro-

And even in the case of a citizen of an enemy nation who was resident in a neutral country at the time of the seizure of his property, it was held that he was entitled to its return notwithstanding a sojourn in the territory of the enemy country of which he was a citizen. *The Friendschaft, supra.* So, too, in *Duguet* v. *Rhinelander,* where a Frenchman had in the midst of a war between France and England, emigrated to the United States from France, it was held by New York's highest court that the seizure by the English of the Frenchman's property, after he had established his residence in the United States, was unlawful.

The late vesting question did not arise with respect to World War I seizures because, pursuant to an opinion of the Attorney General consistent with the authorities cited above, but apparently now abandoned, the Alien Property Custodian voluntarily restored seized property "where the enemy character of a claimant * * * [had] been altered by a change in residence * * *". *Report of the Alien Property Custodian,* 1918, Sen. Doc. No. 435, 65th Cong., 3rd Sess. (1919) 237, 238. The question was raised but not decided in at least two cases involving World War II seizures. Thus, in *Hansen* v. *Brownell,* 234 F. (2d) 60 (D.C. Cir. 1956), the case was disposed of on other grounds, and in *Ruoff* v. *Brownell,* Civ. Action No. 4649-48, United States District Court for the District of Columbia, the action was dismissed before trial by

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nouncements the Court was unanimous. The Court split, however, on the issue of whether an intention to return not translated into action at the time of seizure would suffice. The majority held it would not, while Chief Justice Marshall, with the concurrence of Justice Livingston, held that it should be sufficient, at least where the shipment was made prior to knowledge of the outbreak of hostilities.

stipulation of the parties. The question involved is an important question of federal law arising under the Trading with the Enemy Act which has never been, and should be, settled by this Court.

CONCLUSION

It is respectfully urged that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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PEHLE, LESSER, MANN, RIEMER & LUXFORD
Of Counsel

June, 1957

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13424

HERBERT BROWNELL, JR., Attorney General, and as Successor to the Alien Property Custodian,
APPELLANT

v.

ANNI H. J. E. OEHMICHEN, APPELLEE

Appeal from the United States District Court for the District of Columbia

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Decided February 28, 1957

Mr. George B. Searls, Attorney, Department of Justice, with whom *Mr. Victor R. Taylor,* Attorney, Department of Justice, was on the brief, for appellant.

Mr. James H. Mann, with whom *Mr. Dean B. Lewis* was on the brief, for appellee.

Before EDGERTON, Chief Judge, and PRETTYMAN and BASTIAN, Circuit Judges.

PRETTYMAN, *Circuit Judge:* Appellee Anni H. J. E. Oehmichen, widow of Erhard M. Oehmichen, brought a civil action against the Attorney General under the Trading with the Enemy Act[1] to establish her right in certain property vested by the Alien Property Custodian in 1947, 1950 and 1951. The property consisted of checking accounts in Chicago and Newark banks, shares of stock in

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[1] Sec. 9, Act of Oct. 6, 1917, 40 STAT. 419, as amended, 50 U.S.C.A. App. § 9(a).

a corporation formerly controlled by Mr. Oehmichen, and a claim against that corporation. After trial the District Court made findings of fact and conclusions of law and entered a judgment directing the Attorney General to transfer to Mrs. Oehmichen all of the property. The Attorney General appeals.

Mr. and Mrs. Oehmichen were German citizens. They entered the United States separately in 1933, were married in London in 1934, and returned to the United States that same year. They entered for permanent residence. They engaged in the importing business, principally from Germany. Shortly after the declaration of war with Germany they were arrested as enemy aliens. After a hearing before an Alien Enemy Control Board Mr. Oehmichen was ordered interned for the duration of the war. Subsequently, in December 1942, he was interned at the Crystal City, Texas, Alien Internment Camp. Mrs. Oehmichen voluntarily joined him in internment. Beginning in May, 1942, the Oehmichens from time to time filed requests for repatriation to Germany. They were finally repatriated and sailed on the Gripsholm early in January, 1945. On January 29, 1945, they arrived in German-held territory at Bregenz, Austria. They lived there until October, 1945, when they moved, first to Bavaria, then to Hamburg, and then to Wiesbaden. Mr. Oehmichen died in Wiesbaden in May, 1948. Later that year Mrs. Oehmichen went to Switzerland, obtained a visa from an American Consul, and came to the United States as an immigrant. She has since become a citizen of the United States and reestablished the import business.

Section 9 of the Trading with the Enemy Act permits any person not an enemy to institute a civil action for the recovery of property seized by the Alien Property Custodian. Section 2 of that Act defines "enemy" to include "Any individual * * * of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the

United States is at war". The Attorney General argues that on the face of the statute and on the face of the facts Mrs. Oehmichen was resident within enemy territory and therefore an enemy not entitled to bring an action for recovery of seized property.

The District Court held that the Oehmichens were not resident within enemy territory, because they went there as a matter of choice in preference to internment, that choice being dictated by the rigors of internment and their difficulties with other internees. The District Court found that the Oehmichens were well treated by the authorities but that pro-Nazi groups, which were in the majority at the internment camp, "continually stirred the emotions, fears and anxieties of plaintiff and her husband." It found that Mr. Oehmichen was once physically attacked, once a stone was thrown at him, once they were shouted at, and they were ostracized by the pro-Nazi groups. The court found: "The requests for repatriation to Germany by plaintiff and her husband were made solely to escape internment and the emotional problems created thereby."

The Oehmichens were citizens of Germany and were actually living on German territory during the war. If they had had their way they would have been in Germany for the duration of the war. In May, 1942, Mr. Oehmichen executed and filed a petition for repatriation "In the event of my internment" and further petitioned that his wife be permitted to accompany him "to my native land". Thereafter letters and petitions were filed July 8, 1942, July 26, 1942, September 2, 1942, and September 4, 1942. All these requests for repatriation were made while Mr. Oehmichen was at Ellis Island and before he was sent to the internment camp in Texas. They were made before he experienced internment.

The record shows that at the internment camp the authorities provided a wide range of recreational activities, including movies twice a week, a huge swimming

pool, baseball, tennis, and badminton. There was a thirty-bed hospital. Mrs. Oehmichen testified that the food supply was very good and very adequate—"Yes, very, definitely." Mrs. Oehmichen cooked for her husband. They were supplied certain items of furniture, and if they wanted anything else they could buy it. They had a radio and also had their dog sent down from New York. Mrs. Oehmichen testified, in respect to the living conditions: "However, we would have put up with that, if we wouldn't have had the Nazi pressure in the camp."

In May, 1943, and January and February, 1944, they renewed their appeals for repatriation. On June 27, 1944, Mr. Oehmichen filed a letter, addressed to the Officer in Charge of the camp, advising him, "Should a review of my case result in a decision qualifying me for a parole, you are advised that I would not accept same." Thus he refused freedom in America. Surely that choice was not induced by difficulties in internment.

It is argued that under the rule of the *Guessefeldt* case[3] the Oehmichens were not possessed of the requisite intention to make them "resident within" Germany. We think that case does not apply here. Guessefeldt was visiting in Germany and was physically restrained from leaving it. The Court held that, being under such restraint and seeking at all times to return to the United States, he was not resident within Germany.

The Oehmichens were in Germany by their own free choice. The explanation that because of difficulties with pro-Nazis they were compelled to return to Nazi Germany is singularly unimpressive. As a legal matter we are of opinion that mere discontent with conditions in a well-run internment camp is not the compulsion which would translate otherwise voluntary repatriation into departure

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[3] Guessefeldt v. McGrath, 342 U.S. 308, 96 L. Ed. 342, 72 S. Ct. 338 (1952).

under duress. Internment is the established international treatment of resident enemy aliens by all civilized countries.[3] The Oehmichens chose to return to an enemy country rather than to undergo that established treatment.

If the argument of Mrs. Oehmichen were valid, all German citizens in the United States at the outbreak of the war could have returned promptly to Germany, exercising a wish not to be interned here, lived there until the war's end, and returned here to claim they had never been resident in Germany. Under her argument no German national residing in the United States prior to the war, and moving by choice to Germany during the war, would have become resident in Germany, as every such person was faced with the possibility of internment here. We think the statute reflects no intention to achieve such a result.

We do not have in this case anything resembling the facts depicted in such cases as *Guessefeldt, supra, Acheson* v. *Murakami,*[4] *Kaku Nagano* v. *McGrath,*[5] or *Yaichiro Akata* v. *Brownell.*[6] The Oehmichens were willing residents of Germany.

The judgment of the District Court must be reversed and the case remanded for entry of a judgment dismissing for lack of jurisdiction.

Reversed and remanded.

EDGERTON, *Chief Judge, dissenting.* The question is: If aliens who have long been resident in the United States choose repatriation to an enemy country in preference to imprisonment in the United States during a war, and

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[3] See full discussion in Johnson v. Eisentrager, 339 U.S. 763, 772 *et seq.*, 94 L. Ed. 1255, 70 S. Ct. 936 (1950).

[4] 176 F. 2d 953 (9th Cir. 1949).

[5] 187 F. 2d 759 (7th Cir. 1951).

[6] 125 F. Supp. 6 (D. Hawaii 1954).

always intend to return to the United States as soon as the war is over, are they, within the meaning of the Trading with the Enemy Act, "resident" in the enemy country during the sojourn there? I think not.

The District Court made the following undisputed findings, among others. The requests for repatriation to Germany "were made solely to escape internment and the emotional problems created thereby" and "were clearly limited to repatriation during the time that internment was expected to last, i.e., the duration of the war. ... Plaintiff and her husband at all times intended to return to the United States after the end of hostilities". They retained "a fixed determination" to do so. Accordingly, "At no time while they were in Austria or Germany did plaintiff or her husband seek employment or engage in business except for plaintiff's husband's employment with the United States Army of Occupation. Plaintiff's husband was offered opportunities to engage in business in Germany which he did not accept. ... After plaintiff's furnishings were stored [here], both she and her husband, while in the United States and in Europe, refused offers to buy their automobile and certain household appliances at premium prices because they planned to use these possessions again upon their return to the United States."

It is true that Oehmichen's place of confinement when he first asked for repatriation was Ellis Island. But he and his wife did not choose to return to Germany in order to avoid Ellis Island. They knew that internment for him was in prospect. The court correctly states that they "chose to return to an enemy country rather than to undergo" internment. Their internment was legal and in accordance with international usage, but it was nonetheless imprisonment. Appellant and her husband never had "any doubt" that they were "in prison". No one similarly situated would have any doubt. The internment camp was surrounded by a "very high" barbed-wire

fence, kept lighted at night. There were watchtowers and armed guards. The shelters had no plumbing. Water had to be carried in pails about a hundred feet. The bathhouses were about 500 feet away from the shelters. The fact that the food was good and there were recreation facilities did not turn the prison into something else.

In explanation of the fact that she and her husband once refused parole, appellee testified: "We felt that parole was like for any ordinary criminal. Mr. Oehmichen would have to report to a parole officer. And Mr. Oehmichen did not want to be in a waiting room with a criminal who might knock him on the shoulder and say: Buddy, how long have you been in? And that was the objection of Mr. Oehmichen to be released on parole. He did not feel he had done anything he needed to be paroled for. ... He wanted to be released without any ties attached to it. I mean, parole meant that he was paroled of some guilt, which he did not feel he had. There was no guilt. Q Am I correct in saying that he felt by applying for parole, it was acknowledgement of guilt? A That is right. Q And he felt he would be treated as any other criminal? A Any ordinary criminal. Q Now, did you share that feeling, Mrs. Oehmichen? A At the time, yes." When they learned that the conditions of parole would be less drastic than they had supposed, appellee requested her husband's release. Parole was then refused. When they left the United States, the alternative was not parole but continued imprisonment.

I do not reach appellee's other contention.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

January Term, 1957

C. A. 5090-54

No. 13,424

HERBERT BROWNELL, JR., Attorney General, and as Successor to the Alien Property Custodian,
APPELLANT,

v.

ANNI H. J. E. OEHMICHEN, APPELLEE.

United States Court of Appeals for the District of Columbia Circuit

Filed Feb. 28, 1957

JOSEPH W. STEWART, *Clerk*

Appeal from the United States District Court for the District of Columbia.

Before: EDGERTON, Chief Judge, and PRETTYMAN and BASTIAN, Circuit Judges.

Judgment

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this case be, and it is hereby, remanded to the said District Court with directions to enter a judgment dismissing the complaint for lack of jurisdiction.

Dated: February 28, 1957.

PER CIRCUIT JUDGE PRETTYMAN.

Separate dissenting opinion by Chief Judge Edgerton.

APPENDIX B

Trading with the Enemy Act, as amended (40 Stat. 411, et seq., as amended, Tit. 50 U.S.C. App. § 1, et seq.):

SEC. 2. The word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

* * *

SEC. 9(a). Any person not an enemy or ally of the enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant

to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.